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FIRST DIVISION
November 23, 2015

Nos. 1-13-3569 & 1-13-3945 (Cons.)
2015 IL App (1st) 133569-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DEUTSCHE BANK NATIONAL TRUST)	
COMPANY,)	
)	
Plaintiff-Appellant and)	Appeal from the
Cross-Appellee,)	Circuit Court of
)	Cook County
v.)	
)	
AXXA, INC., KENNETH A. SWIATEK,)	No. 08 CH 28886
CHICAGO TITLE LAND TRUST COMPANY,)	
Under Land Trust Agreement Dated August 13,)	
2007, and known as Trust 8002349240, and)	Honorable
STANDARD PACIFIC CAPITAL, INC.,)	Franklin Ulyses Valderrama,
)	Judge Presiding.
Defendants-Appellees and)	
Cross-Appellants.)	
)	

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Liu and Justice Cunningham concurred in the judgment.

ORDER

Held: Trial court's denial of plaintiff's motion for leave to amend was an abuse of discretion where plaintiff was left without any way to raise *res judicata* as a result, and where the trial court specifically recognized the underlying case in its order granting Rule 304(a) language.

¶ 1 This is an appeal from several orders by the trial court made in connection with a suit to quiet title. The trial court granted Illinois Supreme Court Rule 304(a) language as to the following orders, making them immediately appealable: (1) the order dated March 22, 2012, denying plaintiff's motion for judgment on the pleadings; (2) the January 24, 2013 order denying plaintiff's motion for summary judgment and granting defendants' cross-motion for summary judgment; and (3) the order dated May 15, 2013, denying plaintiff's motion for leave to file a verified first amended complaint, or alternatively, to reconsider the order of January 24, 2013. For the following reasons, we affirm the trial court's rulings of March 22, 2012, and January 24, 2013, but reverse the trial court's denial of plaintiff's motion for leave to amend its complaint.

¶ 2 BACKGROUND

¶ 3 On August 8, 2008, plaintiff Deutsche Bank National Trust Company (Deutsche Bank) filed a complaint to quiet title and for other relief against Axxa, Inc. (Axxa), Kenneth A. Swiatek (Swiatek), Chicago Title Land Trust Company, under a land trust agreement dated August 13, 2007, and known as Trust 800 2349240 (Chicago Title), James Finnegan a/k/a Jim Finnegan (Finnegan), Murphy's Law, L.P., a limited partnership (Murphy's), Carolyn McCall (McCall), Standard Pacific Capital, Inc. (Standard Pacific), and unknown owners and on-record claimants (collectively, "defendants"). Deutsche Bank sought to quiet title to real property commonly known as 3110 Shagbark Lane in Hazel Crest, Illinois (subject property). Deutsche Bank claimed that it was the indefeasible fee-simple titleholder in the subject property by reason of a judicial sale deed obtained on July 16, 2007, and recorded on July 18, 2007.

¶ 4 Deutsche Bank alleged that it acquired its interest pursuant to a foreclosure of a mortgage lien given by Charles W. Taylor (Taylor). Deutsche Bank alleged that the chronology of deeds pertaining to the subject property title was as follows. In 2000, Finnegan and Swiatek, as

partners, acquired the property pursuant to the Swiatek-Finnegan Partnership Agreement.

Deutsche Bank alleged that according to the terms of the partnership, each was the holder of a 50% interest, but that in the event of a deadlock, Finnegan held the deciding and controlling vote as managing partner. Deutsche Bank also alleged that Finnegan held a security interest given to him by Swiatek for monies due or to become due from Swiatek under the partnership agreement. Deutsche Bank alleged that pursuant to numerous financial defaults by Swiatek, Finnegan provided Swiatek with notice of sale and conducted a sale of Swiatek's interest pursuant to the Uniform Commercial Code (UCC). Deutsche Bank alleged that Finnegan was the successful bidder at this sale, and that Swiatek's interest was thereby extinguished. In 2003, by way of warranty deed, Finnegan conveyed his interest to McCall. In 2005, McCall conveyed her interest to Taylor by warranty deed. Taylor then conveyed a mortgage interest to MERS as nominee for Maribella Mortgage, LLC (Maribella). Deutsche Bank alleged that pursuant to a duly recorded assignment, Deutsche Bank acquired the interests of MERS as nominee for Maribella and commenced foreclosure proceedings when Taylor defaulted on his mortgage. Deutsche Bank further alleged that it was an indefeasible fee-simple titleholder of the subject property by reason of the judicial sale deed delivered to Deutsche Bank.

¶ 5 Deutsche Bank further alleged that Swiatek, apparently operating under the impression that Finnegan did not convey a whole interest, but rather only a half interest, in his deed conveyance to McCall, transferred his purported interest in the subject property to Axxa. In 2007, Axxa conveyed its purported interest in the subject property to Chicago Title. Chicago Title then conveyed a mortgage interest to Standard Pacific in 2008.

¶ 6 Deutsche Bank also alleged that Murphy's may claim some right or interest in the subject property, but that interest would be subordinate to Deutsche Bank's interest. Deutsche Bank

sought to have the interests of Swiatek, Axxa, Chicago Title, Standard Pacific, and Murphy's extinguished as null and void.

¶ 7 In lieu of filing an answer to Deutsche Bank's complaint, defendants filed a motion to dismiss under section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2012)), stating that Swiatek owned a 50% interest in the property individually, *i.e.* the property was not a partnership asset, and that Finnegan's conveyance of the 100% interest in the property to McCall was void and had no effect on Swiatek's 50% transfer to Axxa. Defendants also claimed that because Finnegan originally conveyed his individual 50% interest to Murphy's, that there was nothing left to transfer to McCall. The trial court denied defendants' motion to dismiss with prejudice. We do not see a transcript in the record, and as such, have no indication of the reasons for this denial.

¶ 8 Defendants then filed an answer and two affirmative defenses to Deutsche Bank's complaint. They alleged that the property was not a partnership asset because neither Finnegan nor Swiatek treated it as such, and the property was never placed in the name of the partnership. Thus, defendants argued that the partners, Swiatek and Finnegan, each had a 50% interest in the property. Defendants also argued that the warranty deed issued by Finnegan to McCall was fraudulent, as Finnegan had no interest left to convey and Swiatek never signed the deed on behalf of the partnership. Deutsche Bank moved to strike the affirmative defenses pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)), contending that they contained various improper legal conclusions. The trial court agreed and struck the affirmative defenses without prejudice. Defendants then filed first amended affirmative defenses.

¶ 9 Upon filing an answer to the Swiatek defendants' amended affirmative defenses, Deutsche Bank moved for judgment on the pleadings. Deutsche Bank argued that defendants'

defenses were barred by a prior judgment because the same arguments had been raised by Swiatek in case No. 02 L 12984, wherein the court ruled against Swiatek regarding the propriety of the UCC sale by which Finnegan acquired Swiatek's 50% interest in the subject property, and regarding the validity of Finnegan's conveyance of the subject property to McCall.

¶ 10 During the pendency of this motion, Deutsche Bank filed an emergency motion for a temporary restraining order. In its motion, Deutsche Bank argued that shortly after acquiring the subject property, it became aware that Swiatek and Axxa were claiming a 50% interest in the property, which is when it filed the instant suit to quiet title. Deutsche Bank claimed that it discovered that defendants Axxa and Swiatek were attempting to exercise their alleged interest in the subject property by breaking the locks installed by Deutsche Bank's property manager to protect the property, and listing the property for sale or lease. Deutsche Bank sought a temporary restraining order to prevent such actions until the court ruled upon the ownership claims.

¶ 11 The affidavit of Deutsche Bank's property manager was attached to Deutsche Bank's motion, and stated that he was hired on July 8, 2011, as property manager, and when he arrived on the property, he discovered that Axxa and Swiatek had been renting it out. The property manager stated that the subject property became vacant on August 12, 2011, and that he then changed the locks to secure it.

¶ 12 The trial court denied the motion for a temporary restraining order, but stated that "[n]o parties shall list the property for sale or rent until further order of court", and that "Axxa, Inc. is to continue to maintain the property until further order of court."

¶ 13 On March 22, 2012, the trial court apparently held a hearing on Deutsche Bank's motion for judgment on the pleadings, but that transcript does not appear in the record. The trial court

issued an order after the hearing that stated that Deutsche Bank's motion for judgment on the pleadings was denied "as it is not the proper motion to address *res judicata* with regard to the current state of the pleadings."

¶ 14 On or about April 13, 2012, Deutsche Bank filed a motion for summary judgment on the grounds that the doctrine of *res judicata* barred defendants from alleging an interest in the subject property. Deutsche Bank argued that defendants were barred from arguing that (1) Swiatek's 50% interest in the subject property never properly transferred to Deutsche Bank's predecessors because the UCC sale that Finnegan conducted was improper and invalid, and (2) that the deed executed by Finnegan attempting to convey his interest in the subject property to Murphy's prevented him from subsequently re-conveying the subject property to McCall.

¶ 15 Defendants, in response, filed a cross-motion for summary judgment asserting that Deutsche Bank could not succeed on its quiet title claim because it did not have actual possession of the subject property at the time the lawsuit was filed. They argued that it was an undisputed fact that Axxa had actual possession of the property and had tenants in the property at the time the lawsuit was filed, and therefore Deutsche Bank could not prove the necessary elements of its cause of action.

¶ 16 On or about January 24, 2013, the trial court issued a written order. It is unclear from the record whether a hearing was held, but there is no transcript of any such hearing. In its order, the trial court denied Deutsche Bank's motion for summary judgment, and granted defendants' motion on the grounds that Deutsche Bank did not have actual possession of the subject property at the time of the filing of its quiet title action. Without citing to authority, the trial court stated that "Illinois law sets forth that in order to succeed in a quiet title action a plaintiff must plead and prove actual possession of the property unless the property is vacant or unimproved." The

trial court then noted that because Deutsche Bank's complaint set forth that it was in constructive possession of the property, and because it was undisputed that Axxa was in actual possession of the property, the court could not grant Deutsche Bank's motion as a matter of law. The trial court further noted that while Deutsche Bank argued that Axxa improperly leased the property, thereby alleviating the possession requirement, Deutsche Bank "has not provided a case for this proposition."

¶ 17 Also in its January 24, 2013 order, the trial court granted Deutsche Bank's request to file a motion for leave to file an amended complaint.

¶ 18 Deutsche Bank then filed its motion for leave to file an amended complaint to assert an additional cause of action for declaratory judgment, or in the alternative, for the trial court to reconsider its ruling from January 24, 2013 order granting defendants' cross-motion for summary judgment. Defendants opposed this motion, arguing that Deutsche Bank could not satisfy the four factors required to allow an amendment to the complaint: (1) the proposed amendment would cure the defective pleading; (2) the other party would not sustain prejudice or surprise by virtue of the amendment; (3) the proposed amendment would be timely; and (4) there were no previous opportunities to amend the pleadings. Defendants further argued that on or about October 25, 2011, Deutsche Bank was made aware that there was a possibility that its complaint would fail because that is when defendant's raised the "actual possession" argument for the first time, and that no amendment to the complaint was sought at that time.

¶ 19 On May 15, 2013, the trial court held a hearing on Deutsche Bank's motion for leave to file an amended complaint or reconsider its ruling. The trial court noted that Deutsche Bank never filed a reply to defendants' motion in opposition to Deutsche Bank's motion to file an amended complaint, and had not addressed the four required factors. Counsel for Deutsche Bank

reminded the court that the reason it did not file a reply is because the trial court initially orally granted its motion for leave to amend, but the next afternoon merely granted Deutsche Bank's motion to file a motion for leave to amend, which was now before the court. Counsel for Deutsche Bank argued that it had been trying to get the issue of *res judicata* before the court many times, and that was the purpose of the amendment. The trial court stated that it now remembered the procedural history, and stated that the issue at that point was whether or not filing an amended complaint to allege an action for declaratory judgment would finally allow Deutsche Bank to bring the issue of *res judicata* before the court. The trial court then went through the four factors necessary to amend a complaint after a ruling on summary judgment, and found that there had been previous opportunities to amend, and so denied Deutsche Bank's motion for leave to file an amended complaint. It also denied Deutsche Bank's motion to reconsider the January 24, 2013 ruling.

¶ 20 Deutsche Bank then filed a motion for an Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) finding on: (1) the order dated March 22, 2012 denying its motion for judgment on the pleadings; (2) the January 24, 2013 order denying its motion for summary judgment and granting defendants' cross motion for summary judgment; and (3) the order dated May 15, 2013 denying its motion for leave to file a verified first amended complaint, or alternatively, to reconsider the order of January 24, 2013.

¶ 21 On October 17, 2013, the trial court entered an order on Deutsche Bank's motion for a Rule 304(a) finding. In its written order, the trial court noted that in or around February 2000, "Swiatek executed a promissory note *** in favor of Finnegan, secured by a collateral assignment of Swiatek's interest in the Partnership." The trial court stated in its order that "[n]otwithstanding that the Property was purchased by the Partnership, Finnegan subsequently

attempted to convey an individually held 50% interest in the Property to Murphy's Law, L.P."

The trial court further stated that sometime later, "Swiatek defaulted on the Note and Finnegan filed the underlying lawsuit to collect on Swiatek's interest in the Partnership." The trial court cited to *Finnegan v. Swiatek et al.*, 02 L 12984 (Complaint filed on October 11, 2002). The trial court stated that during the course of litigation, Finnegan foreclosed on the note by conducting a UCC sale, and Swiatek's 50% interest in the partnership was transferred to Finnegan. The trial court noted that the court in case No. 02 L 12984 "granted summary judgment in favor of Finnegan and against Swiatek, finding that the UCC sale of Swiatek's interest in the Partnership was transferred properly." The trial court further noted in its order that the court in case No. 02 L 12984 found that Finnegan's conveyance of a 50% interest to Murphy's was void since Finnegan did not possess an individual interest in the property, and rather the property was 100% owned by the partnership.

¶ 22 The trial court went on to note that thereafter, Finnegan conveyed the partnership's 100% interest in the property to McCall, who in turn conveyed the property to Taylor. The trial court stated that in or around April 2005, Taylor executed two mortgages in favor of Maribella Mortgage, which was later assigned to Deutsche Bank. When Taylor became delinquent on his mortgage payments, Deutsche Bank filed a foreclosure complaint seeking to foreclose on the mortgage it held on the property. The trial court noted that in the foreclosure lawsuit, a judgment was entered against Taylor and a judicial sale of the property occurred, with Deutsche Bank as the purchaser.

¶ 23 The trial court further stated in its order that while the foreclosure proceedings were pending, Swiatek attempted to convey an individually held 50% interest in the property to Axxa,

which in turn purported to convey that 50% ownership interest to Chicago Title. Chicago Title then gave a mortgage to Standard Pacific.

¶ 24 The trial court noted in its October 17, 2013 order that Deutsche Bank then filed the instant lawsuit to quiet title. The court gave an overview of the pleadings and orders that had been entered in the case thus far, and then granted Deutsche Bank's motion for Rule 304(a) language as to all three orders.

¶ 25 ANALYSIS

¶ 26 On appeal, Deutsche Bank raises several arguments. It contends that the trial court erred in denying its motion for judgment on the pleadings and motion for summary judgment, while granting defendants' cross-motion for summary judgment, because it failed to consider the issue of *res judicata*. Deutsche Bank argues in the alternative that the trial court erred in denying its motion for summary judgment and granting defendants' cross motion for summary judgment when such rulings assumed the validity defendants' alleged competing title to, and right to possession of, the subject property. Deutsche Bank also argues that the trial court erred in denying plaintiff's motion for leave to file a verified first amended complaint when the amended complaint involved issues and arguments previously known and briefed by the parties, and when the amendment was necessary to resolve the current encumbrance on the subject property. And finally, Deutsche Bank argues that the trial court erred in denying plaintiff's motion to reconsider its rulings on summary judgment without addressing how the existing law about the fraudulent activity exception applies to the need for actual possession in a quiet title claim.

¶ 27 Judgment on the Pleadings

¶ 28 We begin with Deutsche Bank's appeal of the trial court's March 22, 2012 order denying Deutsche Bank's motion for judgment on the pleadings. Judgment on the pleadings is proper

where the pleadings disclose no genuine issue of material fact and the movant is entitled to judgment as a matter of law, *i.e.*, similar to a motion for summary judgment, but limited to the pleadings. *Gillen v. State Farm Mutual Automobile Insurance Co.*, 215 Ill. 2d 381, 385 (2005). The court deciding the motion must take all reasonable inferences from those facts as true, disregard all conclusory allegations and surplusage and construe the evidence strictly against the movant. *McCall v. Devine*, 334 Ill. App. 3d 192, 198 (2002). We review a circuit court's order denying judgment on the pleadings *de novo*. *Id.*

¶ 29 Here, there is no transcript in the record for the hearing on the motion for judgment on the pleadings. We note that when the record on appeal is incomplete, any doubts arising from that incompleteness will be construed against the appellant and every reasonable presumption will be taken in favor of the judgment below. *People v. Banks*, 378 Ill. App. 3d 856, 861 (2007). The brief, handwritten order of the trial court states that Deutsche Bank's motion was denied "as it is not the proper motion to address *res judicata* with regard to the current state of the pleadings." It is a reasonable presumption that the trial court properly denied Deutsche Bank's motion for judgment on the pleadings because its *res judicata* argument was raised for the first time in its motion for judgment on the pleadings, in response to defendants' affirmative defenses, and was not pled in the complaint. See *Parkway Bank v. Meseljevic*, 406 Ill. App. 3d 435, 442 (2010) (in ruling on a motion for judgment on the pleadings, the court must consider only those facts apparent from the face of the pleadings, matters subject to judicial notice, and judicial admissions in the record). Accordingly, we will not overturn the trial court's denial of Deutsche Bank's motion for judgment on the pleadings.

¶ 30 Motion and Cross-Motion for Summary Judgment

¶ 31 In denying Deutsche Bank's motion for summary judgment, and in granting defendants' cross-motion for summary judgment, the trial court found that because Axxa, and not Deutsche Bank, was in actual possession of the property at the time Deutsche Bank filed its complaint, Deutsche Bank could not meet the elements of its quiet title claim. Deutsche Bank claims that when it purchased the property at a foreclosure sale, it was unoccupied, but that subsequently Swiatek improperly deeded a one-half interest in the subject property to Axxa. Deutsche Bank claims that three months after the judicial sale deed was issued to it, Axxa improperly conveyed that one-half interest to Chicago Title. Deutsche Bank further claims that upon discovering this competing claim to title, Deutsche Bank filed its complaint in the instant matter, and that unbeknownst to it, prior to filing the complaint, defendants leased out the subject property, which had been vacant since the foreclosure sale. Moreover, Deutsche Bank contends that it has established that fraud was present in the instant case wherein defendants leased out the property despite knowing they had no interest in the property after the 2002 ruling in case No. 02 L 12984.

¶ 32 An action to quiet title is an equitable proceeding wherein a party seeks to settle a dispute over ownership of property or remove a cloud upon his title to the property. *Lakeview Trust & Savings Bank v. Estrada*, 134 Ill. App. 3d 792, 811-12 (1985). A plaintiff suing to remove a cloud from title must be in possession of the property unless the property at issue is vacant and undeveloped or other grounds of equitable relief are established, such as mistake or fraud. *Id.* at 812. However, where a property is not vacant and is not in the possession of the party seeking to remove a cloud from his title, the proper remedy is an action for ejectment rather than an action solely to quiet title. *Id.*

¶ 33 Here, Deutsche Bank stated in its complaint that "Deutsche [Bank] is in constructive possession of the premises and has secured it by way of a board-up service." Accordingly, it admitted that it did not have actual possession of the subject property. Thus, the proper remedy was an action for ejectment rather than one to quiet title. *Id.* Accordingly, we cannot find that the trial court erred in granting defendants' cross-motion for summary judgment and denying Deutsche Bank's motion for summary judgment.

¶ 34 Finding that the trial court properly granted the defendants' motion for summary judgment, while denying Deutsche Bank's motion for summary judgment, it follows that the trial court's denial of Deutsche Bank's motion to reconsider those two rulings was proper.

Sacramento Crushing Corp. v. Correct/All Sewer, Inc., 318 Ill. App. 3d 571, 578 (2000) (having determined that the trial court did not err in its finding that party was entitled to judgment as a matter of law, it follows that the trial court committed no error in denying defendant's motion to reconsider).

¶ 35 Motion for Leave to Amend

¶ 36 Deutsche Bank's final argument is that the trial court erred when it denied its motion for leave to amend its complaint. Initially, we note that there seems to have been some procedural confusion surrounding the motion for leave to amend. On May 15, 2013, the trial court held a hearing on Deutsche Bank's motion for leave to file an amended complaint. Deutsche Bank reminded the court that it had initially orally granted its motion for leave to amend at the conclusion of the January 24, 2013 hearing on the parties' motions for summary judgment, but that the next afternoon, the trial court merely granted Deutsche Bank leave to file a motion for leave to file an amended complaint, which was now before the court. The trial court noted that it remembered the procedural history at that point, and then denied Deutsche Bank's motion for

leave to file an amended complaint, finding that there had been previous opportunities to amend.

The question now becomes whether that finding was an abuse of discretion.

¶ 37 Section 5/2-1005(g) of the Code (735 ILCS 5/2-1005(g) (West 2012)) states that “after the entry of a summary judgment, the court shall permit pleadings to be amended upon just and reasonable terms.” The standard of review for a trial court’s ruling on a motion for leave to amend a complaint is abuse of discretion. *Steinmetz v. Wolgamot*, 2013 IL App (1st) 121375 ¶ 43. In order to determine whether the trial court abused its discretion, we must look at four factors: (1) whether the proposed amendment would cure the defective pleading, (2) whether the parties would sustain prejudice or surprise by virtue of the proposed amendment, (3) whether the proposed amendment is timely, and (4) whether previous opportunities to amend the pleading could be identified. *Id.*

¶ 38 Regarding the first element, we find that the amendment would cure the defective pleading. Deutsche Bank has made it very clear that the issue it is attempting to put before the court is the issue of *res judicata*. By adding a count for declaratory judgment, the issue would be placed squarely before the court on the pleadings.

¶ 39 The next factor is whether the other parties would sustain prejudice or surprise by virtue of the proposed amendment. This court does not find any prejudice or surprise. Deutsche Bank first argued *res judicata* in its motion for judgment on the pleadings, alleging that defendants’ affirmative defenses were barred by a prior judgment. The issue was then discussed and briefed several times by both parties throughout the litigation. Accordingly, there would be no prejudice or surprise to defendants to put this issue before the court by an amendment to the complaint.

¶ 40 We also find that the proposed amendment was timely, considering Deutsche Bank’s motion for summary judgment was denied on January 24, 2013, and Deutsche Bank allegedly

made an oral motion for leave to amend its complaint on that same day. Deutsche Bank then filed a motion for leave to amend on February 14, 2013.

¶ 41 The final factor, and the factor upon which the court based its denial of Deutsche Bank's motion, is whether there had been previous opportunities to amend. The trial court found that there had been previous opportunities for Deutsche Bank to amend its complaint, and thus denied Deutsche Bank's motion. While it is true that instead of amending its complaint to add this issue after the trial court's denial of its motion for judgment on the pleadings, Deutsche Bank re-raised the issue of *res judicata* in its motion for summary judgment, this was an adequate avenue to bring the issue to the court's attention. Deutsche Bank's summary judgment motion was denied based only on the actual possession issue. So despite raising *res judicata* in a proper pleading, the trial court never ruled on the issue. Recognizing that Deutsche Bank was then left without recourse, the trial court granted Deutsche Bank's request for Rule 304(a) language. Accordingly, Deutsche Bank, while it could have amended its complaint sooner, properly raised *res judicata* in its motion for summary judgment, which presumably would have eliminated the need to amend its complaint. However, when the trial court ruled against Deutsche Bank on the motion for summary judgment based on actual possession, the only avenue left for Deutsche Bank to raise the issue before the court was to amend its complaint. Therefore, having found all four factors present in this case, we find that the trial court's denial of Deutsche Bank's motion for leave to amend was an abuse of discretion.

¶ 42 Moreover, within its order granting Rule 304(a) language, the trial court specifically acknowledged that there was an underlying case, No. 02 L 12984, in which the circuit court found that Swiatek's interest had been properly transferred to Finnegan by way of a UCC sale. If we do not reverse the trial court's denial of Deutsche Bank's motion for leave to amend,

Deutsche Bank will effectively be left without a way to bring this underlying case before the court, thus leaving the court without a way to properly address the property interests of the parties. Accordingly, we reverse that denial and remand to the trial court to allow for Deutsche Bank to amend its complaint.

¶ 43 For the foregoing reasons, we: (1) affirm the trial court's order denying Deutsche Bank's motion for judgment on the pleadings; (2) affirm the trial court's denial of Deutsche Bank's motion for summary judgment and defendants' cross-motion for summary judgment; (3) affirm the trial court's denial of Deutsche Bank's motion to reconsider the January 24, 2013 order; and (4) reverse the trial court's denial of Deutsche Bank's motion for leave to amend its complaint.

¶ 44 Affirmed in part; reversed in part; remanded.